Applicant's response of 11/12/07 has been entered. Currently claims 35-37 are pending, with claim 37 being newly added. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 35,36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 35 it is not clear as to what the scope of the limitation of "control means" is. The claim recites "control means for making said transmission means transmit said current location information *only after a customer has been carried to the alighting place*, in order to receive the delivery information including…..from said order receiving server". The language of "*in order to receive the delivery information including…..from said order receiving server*" is reciting nothing more than the intended future result of the transmission step. This is language that is not defining any further structure but is reciting the reason that the transmission is being made. The language "*only after a customer has been carried to the alighting place*" is indefinite with respect to the control means. What is the structure that is covered by this language? It is not clear from reading the specification what the corresponding structure is that is covered by this language. One wishing to avoid infringement would not know what is covered by this language. What structure is disclosed that makes the transmission only after the

customer has been carried to the alighting place? What is the structure from the specification that could prevent the transmission from being completed until the customer has been carried to the alighting place? This is not clear, especially due to the fact that the applicant has stated in their arguments that the control means can be just a button that is pressed by the driver to enable or disable the transmission means. What structure is preventing the driver from pressing the button just before the alighting place is reached? It is not clear as to what structure there is disclosed in the specification that allows the transmission to occur only after the customer has been taken to the alighting place. What structure is this?

For claim 35, from the specification on page 40, it is disclosed that the driver of the transportation vehicle presses a button to enable and disable the operation of the transmission means. The examiner is not clear as to whether or not the "control means" includes the driver who presses the button or if the "control means" is the button itself. The button is not capable of enabling or disabling the transmission means by itself, and is not capable of knowing when the customer is at the alighting place or not, and this leads the examiner to believe that the "control means" includes the driver; however, from a structural standpoint and knowing that under 35 USC 101 a person cannot be claimed as part of the scope of an apparatus claim, the examiner also feels that one could reasonably interpret the "control means" to be the button that is pressed by the driver. What is the disclosed structure from the specification that is covered by the language "control means"? Applicant has argued and stated that the button can be the

control means but also has stated that the control means is not limited to a button. Does this mean that the control means can be the person or includes a person?

From the standpoint of a prior art examination, the examiner has interpreted and assumed the language "control means" to be only the disclosed button, as the other interpretation (that the control means is the driver) renders the claim as non-statutory. This interpretation is done in view of the indefiniteness of the claims as they are best understood by the examiner.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 37 is rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al. (6430496).

For claim 37, Smith discloses a transportation system where transportation vehicles 20 are provided and are dispatched to pick up either passengers or cargo and deliver them to destinations. Smith discloses that current location is sent from the vehicle to a server. There are mandatory terminals located in the vehicles and they are disclosed as having a transmission means, which is the communication link 22 and associated hardware/software that allows the current location information to be transmitted to the order server 10. Also see column 24, lines 47-57. See column 22,

lines 5-8 where it is disclosed that to determine if a vehicle is en route, a comparison is made between two recent position readings. The location information is disclosed as being transmitted over various periods of time, which includes after the vehicle has delivered a person to their destination. This claim language is broad and does not define over the type of transmissions occurring in Smith. In Smith, after a delivery is made, locations of various vehicles are looked at (closest vehicle request, see column 8, line 21 and column 13, lines 44,45), so that it can be determined which vehicle should receive a new pending transportation request. Once the closest vehicle is found, the information on the transportation request (delivery information) is sent to the vehicle as claimed. Once this happens, the vehicle can then pick up the next person and take them to their desired destination. With respect to the recited type of delivery information, a delivery destination for a person satisfies what is claimed. Additionally, this language is seen as being directed to non-functional descriptive material as this information is never used in any subsequent steps and is merely descriptive of data that is being transmitted. This point is more or less moot because Smith clearly discloses the use of and sending of delivery information to the vehicle, which satisfies what is claimed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 35,36, are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (6430496).

For claim 35, Smith discloses a transportation system where transportation vehicles 20 are dispatched to pick up either passengers or cargo and deliver them to destinations. The mandatory terminals are located in the vehicles and are disclosed as having a transmission means, which is the communication link 22 and associated hardware/software that allows the current location information to be transmitted to the order server 10. Also see column 24, lines 47-57. See column 22, lines 5-8 where it is disclosed that to determine if a vehicle is en route, a comparison is made between two recent position readings. This is a disclosure of “periodic” transmission of location information as claimed. The means for receiving delivery information from the server can be interpreted to be the communication link 22 (that allows for the receipt of order information) or can be interpreted as the communication process 24 and associated

hardware that allow the mandatory terminals to receive order information. The plurality of ordering terminals for placing an order are satisfied by the "remote data entry terminals" disclosed in column 4, lines 61-64 or are satisfied by column 4, line 65 to column 5, line 7. The means for transmitting the order information to the server is the telephone line 15 that is used to send the order information from the remote terminals to the order server 10. The order server has means for receiving the current location information of a vehicle and for specifying current location as claimed. The AVL system 18 tracks and determines the location of vehicles as claimed. Also see column 6, lines 36-41. The order server is disclosed as receiving location information from the individual vehicles so that automated dispatching can occur in an efficient manner. The means for receiving the order information is the telephone line 15 that allows the order server to receive information concerning the transportation order. The means for specifying the closest vehicle is satisfied by the fact that Smith discloses a "closest vehicle request", see column 8, line 21 and column 13, lines 44,45. The server has means for transmitting, which is the communication process 24 and the associated hardware/software that controls the communications to the vehicles. Smith discloses that information such as start information and completion information are transmitted as claimed. See column 17, lines 30-48. Not specifically disclosed is the claimed "control means". For purposes of examination and as best understood by the examiner, *after consulting the specification for guidance on what structure is covered by the "control means" language*, the examiner has interpreted the "control means" to be a button that enables or disables the transmission means. The language of "*only after a customer*

has been carried to the alighting place" has been considered by the examiner but in view of the specification as this limitation is best understood, this is still just reciting a button. This is what the examiner would interpret as an on/off button. One of ordinary skill in the art would take notice of the fact that if the mandatory terminals and their associated electronics of the transportation vehicle 20 are continuously left powered on, one would expect the batteries to run down. In view of this fact, one of ordinary skill in the art at the time the invention was made would have found it obvious to provide an on/off button, so that the navigational equipment, communication equipment and other electronics in the transportation vehicle can be turned off and on so as to not run down the vehicle battery. Applicant has disclosed a button that is pressed by the driver to either enable (on) or disable (off) the transmission means. With respect to the language of “only after a customer has been carried to the alighting place" it is not known what structure this is from the specification. As this limitation is best understood by the examiner, this is the same as an on/off button that would have been obvious to one of ordinary skill in the art. The on/off button allows one to enable or disable the transmission of location information in any time period desired, which satisfies what is claimed.

For claim 36, nothing further is recited about the “transportation system” so the claim is satisfied by Smith. The location of the business that intends to use the recited system has nothing to do structurally with the system itself. The location of the business is not part of the transportation system so this is claiming nothing further to that recited in claim 35.

8. Applicant's arguments filed 11/12/07 have been fully considered but they are not persuasive.

With respect to the 112,2nd rejection the arguments are not persuasive. Applicant has recited a “control means" that makes a transmission "*only after a customer has been carried to the alighting place*". Upon a review of the specification it is not clear as to what structure this actually covers. The only disclosed structure that the examiner can find is a disclosure to a button that is pressed by the vehicle driver to either enable or disable the transmission means. The driver is the one that decides when to press the button and the driver seems to be the one that performs part of the recited functional language regarding " *only after a customer has been carried to the alighting place”*. What is the disclosed structure from the specification that only allows the transmission to occur after the customer is carried to the alighting place if this is not covering the driver as well? This is not clear. Applicant has stated that one example can be a button but it is not clear as to how a button that is to be pressed by a human can know when the customer has been carried to the alighting place or not. The driver seems to be the only one with that ability. It is not clear what structure from the specification covers the claimed language of "control means". The rejection will be maintained even though the claim language is somewhat different from that previously presented.

With respect to the prior art traversal, it is found to be non-persuasive. Applicant has argued that there is no teaching in Smith of only transmitting a location from a

vehicle to a server at a specified time. The examiner notes that claim 35 is an apparatus type of claim and notes that there are no method steps occurring. Applicant has claimed a “control means", which has been interpreted to be a button commensurate with the disclosure of the specification. Applicant is arguing a method step for patentability whereas claim 35 is not a method. The examiner has interpreted the control means to be a button and applicant has not addressed this analysis or position at all. See column 22, lines 5-8 where it is disclosed that to determine if a vehicle is en route, a comparison is made between two recent position readings. This is a disclosure of “periodic” transmission of location information as claimed. Also, if there is a button that allows the system to be turned on and off, this then means that there is a way to only allow transmissions in a desired time period (the period of time that the vehicle is actively working and has a working driver). The argument is not persuasive.

Also, in a general sense and addressing the allegation that somehow a discontinuous transmission method is patentable over a continuous transmission method, this is not a persuasive argument. If the prior art teaches a continuous transmission method, the only other option is to have a discontinuous transmission. There are only two options, continuous and discontinuous. Choosing the opposite of continuous is not novel. The reason one has a continuous transmission method is so that the location of the vehicle is known at most times, which is an improvement over discontinuous transmission where you do not know the location at most times. Having a continuous transmission is an improvement over a discontinuous transmission. In any

event, the prior art as set forth by the examiner results in a button to turn the system on and off, which satisfies the structure claimed in apparatus claims 35 and 36.

Applicant's arguments for claim 37 fail to comply with 37 CFR 1.111(b) because they do not point out anything about how newly added claim 37 defines a patentable invention. There are no arguments supporting the patentability of claim 37. Applicant has not specifically pointed out how the language of new claim 37 patentably distinguishes from the references.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3629